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Latest Courts and Crime News From



GEETHAN RAM
ADVOCATES & SOLICITORS

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Appeal Allowed - Court of Appeal Sets Aside Murder Conviction

Cheang Sue Lyn



Revin Kumar (Left), Muthukumara/l Sinnathamby(Middle),
Dato' Geethan Ram Vincent (Right)

PUTRAJAYA:

Today, the Court of Appeal heard the case for and overturned the conviction of Muthukumar a/l Sinnathamby. In 2015, Muthukumar was slapped with two charges arising out of the same incident. The first was under Section 302 of the Penal Code for the murder of Krishnan a/l Mallan, an offence which carries a mandatory death penalty. The second was under Section 324 of the Penal Code for voluntarily causing hurt by dangerous weapons or means to MuhdJefferi Bin Sachithanathan, an offence which is punishable with imprisonment up to 10 years, a fine, whipping, or any combination of the two.

The case was first heard in the High Court of Shah Alam on 12 December 2017, a little over 3 years after the alleged incident had occurred. The Prosecution called 21 witnesses in total to prove their case, with their star witnesses being G Venkatesh Naidu who was an eyewitness to the alleged incident, and MuhdJefferi Bin Sachithanathan who was an eyewitness to the alleged incident and alleged victim of the second charge.

According to the Prosecution, the three men, Krishnan, Venkatesh and Jefferi were drinking outside a Speedmart 99 in Subang Jaya when the Appellant rode past with his then 14-year-old son on a motorbike to buy food. One of the 3 men then yelled at the Appellant, calling him a “cameraman” in reference to their prior history in which the Appellant had reported the men for their role in a scrap iron business in the neighbourhood. The Appellant heard the calling, he then made a U-turn and approached the trio, whereupon he was attacked and allegedly pulled out a blade, injuring one of the men and eventually killing another.

On 21 August 2018, the Prosecution concluded their case and on 24 September 2018 the High Court Judge held that the Prosecution had succeeded in proving a prima facie case and so called for the Defence. The Appellant gave sworn testimony and his son whom was with him on the day of incident also testified for the Defence. At the end of Defence’s case, the High Court Judge found that the Appellant had failed to raise a reasonable doubt against the Prosecution’s case and thereby ordered for a conviction for both charges. The Appellant appealed.

The Court of Appeal today heard 5 issues canvassed by the Appellant’s lawyer, Dato’ Geethan Ram Vincent. The first was that the elements of the charge were not proven in the sense that the Prosecution had failed to prove beyond reasonable doubt that the Appellant had the necessary *actus reus* and *mens rea* to commit the crime. The Appellant’s counsel also challenged the nexus between the alleged murder weapon, a *pisau blade*, and the Appellant, citing the lack of DNA evidence, and the implausibility that the Appellant could have held the blade while riding the motorbike. Secondly, it was the Appellant’s complaint that the Learned Trial Judge had erred when he cited both the star witnesses as credible and overlooked the material contradictions in their evidences. The Learned Trial Judge failed to consider the fact that they were both heavily intoxicated during the incident, “So drunk that one of them forgot where he parked his car!”. Thirdly, the Appellant Court was apprised about the break in the chain of causation which has created a doubt in the Prosecution’s case. Fourthly, it was further submitted that the Learned Trial Judge had delivered a non-speaking judgment as the findings made by his Lordship cannot be reconciled and/or

supported with evidence, and there was also apparent lack of appreciation of evidence in his Grounds of Judgement. Lastly, the Prosecution's non-production of deceased's medical records from 2 hospitals was said, amount to a withholding or suppression of evidence as to the true cause of his death because the deceased was only pronounced dead at the second hospital, several hours after the alleged incident occurred.

The 3-judge-panel was convinced and were especially concerned with the credibility of the 2-star witnesses, duly set aside the conviction meted out by the High Court Judge and acquitted the Appellant. The now 62-year-old was uncuffed from the dock by police officers and walked out of Courtroom with relief on his face.